

DEFENSE OPENING STATEMENT

PART I

BY

DR. ICHIRO KIOSE

PART II

BY

KENZO TAKAYANAGI

ERRATA SHEET

on

Defense Opening Statement

By

DR. KIYOSE

<u>PAGE</u>	<u>LINE</u>	
1	12	change "viewing" to "hewing"
2	27	change "Division" to "Division I"
11	8	after "new order" add "was"
16	8	change "diplomatic" to "diplomats"
28	5	change "inports" to "imports"

attendants and their counsel have come to

President and Members of the Tribunal:

1. The time has now come for the accused to present their defenses to the charges in the indictment and the proofs adduced by the prosecution in support thereof. The tribunal has with great care listened to the prosecutions case these many past months. It has also with great indulgence permitted the defense within the framework of its concept of a fair and just trial to to conduct its part of the case with a tenor befitting the historical importance of these proceedings. Needless to say, the defense to be presented will proceed with the utmost expedition of which we are capable ^{having} viewing only to the issues raised for decision. The task to be undertaken by us is of such grave and novel import that we must at the outset invite the Tribunal's forbearance should we unwittingly stray from the standards we have set for ourselves or should we deviate from the precepts established by the Tribunal.

On 6 May 1945 the accused in open session before this Honorable Tribunal pleaded "not guilty" to all the counts and charges of the indictment, except the accused Okawa. The defense will disprove each and every charge of criminality lodged against them.

2. The allegations in the indictment are divided into 55 counts. Many of them aver one and the same allegation concerning the same charges viewed from different angles and seem to overlap. Some of the counts refer to all the accused and others refer to but a few. If all the accused here were to produce evidence individually and separately on behalf of themselves one after another against these numerous and diverse counts, much repetition and confusion would be bound to arise. So the defendants and their counsel have come to

an agreement that they will produce, as far as possible, evidence in common where the offences charged are in common. As a result of this arrangement, the proof to be presented in common has been divided into the following divisions and evidence will be produced accordingly.

Division 1. General problems.

Division 2. Matters concerning Manchuria and Manchoukuo

Division 3. Matters concerning China.

Division 4. Matters concerning the Soviet Union.

Division 5. Matters concerning the Pacific War.

After the presentation of evidence in the above divisions, each accused will from his own individual standpoint offer evidence concerning himself. It may be probable that since the interests, views and actions of some of the accused were opposed to each other, conflicting evidence will be presented. In so doing some of the accused may, from their own standpoint, demand exceptions to the facts and evidence as adduced in the above five divisions or may furnish other evidence in their individual interest. This phase may for the sake of convenience be called "Division 6. Individual cases or individual defenses".

3. We shall now point out a few important facts which will be dealt with under Division I, and explain the proposed method of presenting evidence. Needless to say, the matters to be pointed out here are but a part and not all of the matters to be dealt with in Division I, further remarks *Division I*, being reserved to be made at the opening of that division. The same can be said with regard to other divisions.

The prosecution assumes that all military precautions adopted by the government of Japan during the years from 1928 to 1945, from the standpoint of international law, were criminal acts in themselves. It not only avers that the policies of Japan were criminal but it asserts that if a nation initiates a so-called "war of aggression", or a war in violation of certain treaties, etc., the individuals who happened to be in office at the time

an agreement that they will produce, as far as possible, evidence in common where the offences charged are in common. As a result of this arrangement, the proof to be presented in common has been divided into the following divisions and evidence will be produced accordingly.

Division 1. General problems.

Division 2. Matters concerning Manchuria and Manchoukuo

Division 3. Matters concerning China.

Division 4. Matters concerning the Soviet Union.

Division 5. Matters concerning the Pacific War.

After the presentation of evidence in the above divisions, each accused will from his own individual standpoint offer evidence concerning himself. It may be probable that since the interests, views and actions of some of the accused were opposed to each other, conflicting evidence will be presented. In so doing some of the accused may, from their own standpoint, demand exceptions to the facts and evidence as adduced in the above five divisions or may furnish other evidence in their individual interest. This phase may for the sake of convenience be called "Division 6. Individual cases or individual defenses".

3. We shall now point out a few important facts which will be dealt with under Division I, and explain the proposed method of presenting evidence. Needless to say, the matters to be pointed out here are but a part and not all of the matters to be dealt with in Division I, further remarks ^{Division I,} being reserved to be made at the opening of that division. The same can be said with regard to other divisions.

The prosecution assumes that all military precautions adopted by the government of Japan during the years from 1928 to 1945, from the standpoint of international law, were criminal acts in themselves. It not only avers that the policies of Japan were criminal but it asserts that if a nation initiates a so-called "war of aggression", or a war in violation of certain treaties, etc., the individuals who happened to be in office at the time

an agreement that they will produce, as far as possible, evidence in common where the offences charged are in common. As a result of this arrangement, the proof to be presented in common has been divided into the following divisions and evidence will be produced accordingly.

Division 1. General problems.

Division 2. Matters concerning Manchuria and Manchoukuo

Division 3. Matters concerning China.

Division 4. Matters concerning the Soviet Union.

Division 5. Matters concerning the Pacific War.

After the presentation of evidence in the above divisions, each accused will from his own individual standpoint offer evidence concerning himself. It may be probable that since the interests, views and actions of some of the accused were opposed to each other, conflicting evidence will be presented. In so doing some of the accused may, from their own standpoint, demand exceptions to the facts and evidence as adduced in the above five divisions or may furnish other evidence in their individual interest. This phase may for the sake of convenience be called "Division 6. Individual cases or individual defenses".

3. We shall now point out a few important facts which will be dealt with under Division I, and explain the proposed method of presenting evidence. Needless to say, the matters to be pointed out here are but a part and not all of the matters to be dealt with in Division I, further remarks ^{Division I.} being reserved to be made at the opening of that division. The same can be said with regard to other divisions.

The prosecution assumes that all military precautions adopted by the government of Japan during the years from 1928 to 1945, from the standpoint of international law, were criminal acts in themselves. It not only avers that the policies of Japan were criminal but it asserts that if a nation initiates a so-called "war of aggression", or a war in violation of certain treaties, etc., the individuals who happened to be in office at the time

be permitted to present briefly evidence concerning similar activities and undertakings of other nations.

5. There are three vital considerations which should be outlined in this opening statement in order properly to comprehend the exact nature of the internal and external policies of Japan during the period covered by the indictment. These are independence, abolition of racial discrimination and diplomacy. These are not merely the policies of any particular cabinets, of which there were many, nor are they principles of specific political parties. Rather they are national, long standing, and firm aspirations universally subscribed to and cherished by the entire Japanese nation since the opening of the country to foreign intercourse in 1853, and are as important to the Japanese as are free speech, free education and freedom of religion in America.

The first of these national characteristics is the fervent desire of the Japanese people to preserve the nation as a perfect independent and sovereign state. The treaty of "ANSEI" between Commodore Perry and the Shogun not only impaired the sovereignty of the nation extra-territorially but infringed upon its customs autonomy and hence was most deeply regretted by all Japanese of that era.

The sincere desire of foremost leaders throughout Japan in the Meiji period was to elevate and enhance the standing of the nation to a position of perfect independence and sovereignty. Since that purpose was a worthy one, consistent with the principles advocated by President Wilson after World War I, its attainment should be recognized by this Tribunal. The defense expects to prove that this principle was the universal aspiration of the Japanese people.

The second point is the demand for the abolition of racial discrimination. Racial discrimination affects those who are discriminated against much more keenly than those

who discriminate. However, in order to eliminate racial discrimination the standards of culture and education for this nation needed to be raised. The government and the people of Japan were not blind to these necessary requisites. Where morality and custom called for certain modifications and improvements they willingly admitted their

necessity and adopted them but the culture of the world is not singular but plural according to the number of nations and races concerned. Each nation has its own history and tradition, and culture is created and developed accordingly.

Since East Asia has its own culture it has been the desire of the Japanese people to preserve and purify it so that an equal position may be maintained with all races and peoples in every respect and thus contribute to the progress of mankind everywhere. The aspiration for racial equality cannot be realized simply by raising the position of the Japanese to the standard of Europeans and Americans. By its very nature the standard of all the peoples in East Asia should be raised in order to attain the complete abolition of discrimination. It is true that some few authors might have referred to this idea in an extravagant manner, but these writers were the exception. It was the unanimously held hope of the Japanese people, together with all other peoples of East Asia, to reach that standard attained by Europeans and Americans. It is expected that this point too will be proved by the defense in order to clarify and avoid any misunderstanding as to any alleged theory of Japanese racial superiority erroneously implied by the prosecution. We shall further develop that Dr. Sun Yat-Son, the father of the Chinese revolution, and other leaders in India and throughout East Asia expressed sympathy with this idea. If the true intention of the Japanese people in this respect is rightfully understood antagonism of other peoples and other countries would surely vanish.

The third fact to be referred to is what has been termed "the fundamental principles and doctrines of diplomacy" of Japan. Since the Meiji Period the prevailing ideal held by the government and the people of Japan in respect to foreign relations was to maintain peace in East Asia and thereby contribute to the welfare of the whole world. This was called the "cardinal principle of diplomacy" in official documents and Imperial Rescripts, that is to say, the fundamental ideal of Japan which guided its foreign

policy. The war with China 1894 to 1895 and the war with Russia 1904 and 1905 were fought with that aim and consideration in view. That is explicitly written in the Rescripts declaring these wars. In the actual conditions at that time, Japan was the only country in the Far East which had adopted a western civilization and had all the qualifications of a modern state. Although China was a vast country abundant in resources, she faced the danger of being partitioned by the Powers into spheres of influence. Most of the regions in the south had already come under the domination of several Occidental Powers. Under such circumstances the Japanese people sincerely felt that Japan had a special mission as a stabilizing power in the East. This is not a peculiar notion held only by the accused; it has been a fundamental principle held for at least two generations by the Japanese nation. This principle has been recognized by the great powers, and we expect to prove that the Anglo-Japanese Alliance was concluded and renewed as a result of its recognition. The Japanese people cannot forget the sympathy of the government and the people of the United States shown toward Japan at the time of the Russo-Japanese war, which was fought for the maintenance of that cardinal principle. That principle of stabilization was never of an aggressive nature. On the one hand, it prevented East Asia from falling into political and economic confusion, and on the other hand it promoted the common development of all Asiatic races and thus their contribution to the progress of mankind. Only in the light of the foregoing ideals can the true relations between Japan and her neighbors be fully understood.

6. The government and the people of Japan have been especially sympathetic to the preservation and development of China. This is well expressed in official and unofficial documents since the Meiji Period. The relations between Japan and the Celestial Empire have often been voiced by the proverb "Shin-Shi-Hosha" which means that "without lips teeth are exposed to coldness", or "two wheels of a car help one another". Another saying is "dobun

doanu" meaning that both countries use the same letters, represent the same Confucian ethics and are of the same race. About 1900 Japan invited many students from China, President Chiang-Kai-Shek being one of them. Since the Chinese revolution in 1911 the Government and people of Japan extended sympathetic understanding to Doctor Sun Yat-Sen's work. While it is true that the Japanese General Staff had annual military plans, as has been pointed out by the prosecution, it is also true that the military staff never had a hypothetical military over-all plan against China. The presentation of evidence on these facts will, we believe, be helpful to the Tribunal in disproving several averments contained in the indictment and the testimony in the record.

7. In Count 5 of the indictment, citing the whole of the particulars in Appendix A, and treaties and assurances in Appendix B and C, it is charged that the accused as leaders, organizers, instigators or accomplices formulated and executed a conspiracy with an intention to dominate the whole world in conjunction with Germany and Italy. There is no greater misunderstanding than this. As to relations between Japan and Germany and Italy, my colleagues will present our case in the phase dealing with the Anti-Comintern Pact and the Tri-Partite Pact. I should like here to treat the matter as a whole concerning the ideals and aspirations of Japan on the one hand and those of Germany and Italy on the other.

Much of the confusion and misunderstandings are due to the interpretation of the idea of "hakko ichiu", cited in the preamble of the Tri-Partite Pact and in the Imperial Rescript, issued at the time of the conclusion of the Pact. Solemn classical words and phrases are fondly and customarily used in our official documents, giving to the document an effect of dignity but often adding obscurity even to the Japanese people themselves. So much more with foreigners who have different languages and concepts. For example, the Imperial Rescript issued on the conclusion of the Tri-Partite Pact

paraphrases "hakko ichiu" and says, "It is indeed a great teaching of our Imperial ancestors that the Great Cause shall be propagated all over the eight corners of the world and the whole humanity on earth shall be deemed one family. To this august teaching we endeavor to adhere day and night."

"The Great Cause" here means "universal truth." To be "propagated" here means that the said idea be made plain and manifest by all the world. "To be in one family" means that whole mankind is to live together with the feeling of fraternity in one household. As said before the culture is of a different origin from that of the West and, therefore, the expression is necessarily very different or even quaint to Europeans and Americans.

In the proposed plan for Japanese-American understanding, which was the basis of negotiation between the Secretary of State Hull and Ambassador Nomura, "Hakko Ichiu" is translated into English as "universal brotherhood." The preamble of the Tri-Partite Pact should be interpreted in its proper meaning. Whatever was the idea held by Germany and Italy at the time of the conclusion of the treaty, concrete and conclusive evidence will be produced to show that the Japanese Government had no intention to conquer the world in cooperation with Germany and Italy.

8. In Article 2 of the said Pact it is provided in effect that Germany and Italy respect and recognize the leading position of Japan in the establishment of a new order in Greater East Asia. No word is more subject to misunderstanding than the expression "New Order in East Asia" or "Greater East Asia Co-Prosperity Sphere." The Prosecution went so far as to say that "a new order" is an idea to destroy democracy and freedom and the respect for personality, which are the basis of democracy. Is it not a confusion of the ideal of the Japanese nation and that of other countries, or, at least, a product of association with other ideas that led the Prosecution to such a misunderstanding? But the implication of the particular Japanese words as used at the period under consideration, and the nature of the Japanese idea itself alone are necessary for consideration here.

It was in the Konoye declaration of November 3rd and December 22, 1938, that the words "New Order in East Asia" were first officially used. As to the meaning of "New Order in East Asia" as used in the Konoye declaration, that declaration is a document

which speaks for itself; that Japan, Manchoukuo and China will cooperate on the basis of good neighborliness, common defense against communism, and economic cooperation. As to the relation with other countries, the declaration says, "With regard to the economic relations between Japan and China, Japan has no intention of monopolizing China economically." It did not exclude the principle of equal opportunity. We must, however, remember, as the prosecution contends, that it was during the period when large scale battles were taking place between the two countries involving more than a million soldiers. In such a period of large scale conflict it was inevitable that various restrictions were imposed upon foreigners as well as upon nationals of the conflicting states. In connection with this point, the joint declaration of Foreign Minister Arita and the British Ambassador Craig in July, 1939, will be presented as evidence. The declaration says in part that, "the British Government fully recognizes the actual condition that a large scale warfare is going on in China, and the British Government recognizes that the Japanese Army has a special demand in order to secure its own safety and to maintain peace and order of the area under its control as long as the said condition continues to exist. . ."

The intrinsic content of the idea of the new order as used in Japan is the "Ko-do" or "Imperial Way", as it is sometimes translated. The gist of the "Imperial Way" is benevolence, righteousness and moral courage. It respects courtesy and honor. Its ideal is to let everyone have his or her own part, and fulfill his or her duty. It envisions ruler and ruled to be of one mind, and the affairs of state to be administered by the sincere aid of the whole people. It is just the opposite to the idea of militarism and despotism. It is extremely difficult to express such ideals in language other than Japanese, but as far as the respect for individual personality is concerned, there is no fundamental difference between the "Imperial Way" and democracy. It is unusual to adduce evidence to prove such abstract ideas in a court of justice, but we must do this in the present case. We shall

offer a speech made by one of the accused in the Imperial Diet showing the difference between the "Imperial Way" and the totalitarianism of Germany and Italy.

Another obvious distinction between the two is that there is no taint of racial superiority in Japan as is found in Germany. On the contrary, our people are always conscious of our own limitations and are anxious to reach the world standard with other peoples in East Asia. Since our new order^{was} to respect the independence of every country, it never implied the idea of world conquest and it has nothing to do with the restriction of individual freedom. The terminology of "leadership" is understood by us not to mean domination or control but only to take the initiative as a leader or guide among ourselves as equals. Such fundamental national ideals can never be affected or changed by the inept wording of a treaty or any other document, official or otherwise. Later on we came to use the words "the New Order in Greater East Asia" or "the Greater East Asia Co-Prosperity Sphere" as including not only Manchuria and China, but also other countries in East Asia. Notwithstanding the fundamental idea remained the same. The joint declaration consisting of five Articles adopted at the Greater East Asia Conference at Tokyo in November, 1943, well expresses the essence of the concept of the new order in Greater East Asia. It provides:

1. The countries of Greater East Asia through mutual cooperation will ensure the stability of their region and construct an order of common prosperity and well-being based upon Justice.

2. The countries of Greater East Asia will ensure the fraternity of nations in their region by respecting one another's sovereignty and independence and practicing mutual assistance and amity.

3. The countries of Greater East Asia by respecting one another's traditions and developing the creative faculties of each race, will enhance the culture and civilization of Greater East Asia.

4. The countries of Greater East Asia will endeavor to accelerate their economic development through close cooperation upon a basis of reciprocity and to promote thereby the general prosperity of their region.

5. The countries of Greater East Asia will cultivate friendly relations with all the countries of the world and work for the abolition of racial discrimination, the promotion of cultural intercourse and the opening of resources throughout the world, and contribute thereby to the progress of mankind.

The foregoing resolution, together with the speeches given at the conference by the representatives of various countries will be presented as evidence. Although the resolution considers East Asia as a family of nations with regard to political life, it takes a world-wide view as far as the intercourse among countries and development of resources and the exchange of cultures are concerned. Article 5 of the resolution is especially noteworthy. It was generally held at that time that this planet is too large as a political unit, but too small economically if it is divided into various units. Thus it will be shown that the idea of new order among us has not been that of world conquest, but is in essence strangely similar to the Good Neighbor Policy of the United States.

9. My duty is to outline facts to be presented to the Tribunal in concise form. Therefore, I will avoid legal arguments as far as possible. As the prosecution aptly indicated, conspiracy as the first crime specified in the Charter of this Tribunal, is only referred to and not defined in the Charter. Apart from the legality of the Charter to punish conspiracy, we cannot without definition of conspiracy determine the facts which the prosecution charges as criminal. Nor can the defendants know what kind of evidence they are called upon to disprove.

The prosecution has cited decisions of inferior federal courts of the United States in an attempt to define conspiracy and seem to assert that the decisions of such courts are indisputable. This Tribunal is an international court and the

President has already expressed the opinion that because of its status it could hardly be expected to take judicial knowledge even of the Constitution of the United States of America and it is inconceivable that the Tribunal could accept the decisions of inferior federal courts of the United States when those same courts came into existence only as a result of the provisions of that same constitution.

We submit respectfully that it is not proper to apply a particular legal theory which has developed in

a certain country with its peculiar historical background at this Tribunal as if it were a general principle of law of universal application. The idea of conspiracy is unique in the Anglo-American legal system and its counterpart cannot be found in the countries following the Roman Law. Even in countries which have adopted Anglo-American legal principles, it is impossible strictly to apply in toto particular decisions of England and America. In some countries when two or more persons plot a particular crime they are punished as accomplices. In that case the object of the plot must be clearly illegal and it must be shown that it cannot be accomplished except by adopting an illegal method. In Japan it is rather exceptional to punish the preparation of a crime and plot thereof before the commission of a criminal act. The kinds of crimes the preparation of which are punishable are enumerated in the criminal code. The same, as I understand it, could be said as to the criminal law of other countries which have adopted the Roman legal system. Moreover, in order to constitute a plot or conspiracy as an independent crime, the date and place of such plot or conspiracy must be specified to an intelligible extent. In countries which have not adopted the Anglo-American legal system, it is inconceivable, therefore, that a conspiracy could exist from January 1928 to September 2, 1945. What I wish to submit is that the said doctrine, to-wit, the doctrine of conspiracy, as has been developed in England and America as one entity, cannot be deemed to constitute international law. If the decisions cited by the prosecution mean that those who join the conspiracy after the common plan was formulated are criminally responsible to the same extent as the original conspirators, we submit this is decidedly not a commonly accepted legal principle throughout the world and, therefore, cannot be applied by this International Tribunal as a precept of international law.

10. The method of selecting the head of the cabinet since 1928 was largely a matter of chance. If a cabinet falls for some reason or other, the Emperor seeks, through Lord Keeper of the

Privy Seal, the advice of elder statesmen (mostly ex-premiers) as to who is to be the successor. As the elder statesmen themselves are not an organized group, those who happen to attend the meeting discuss the matter and select extemporaneously a premier designate after due consideration is given to the exigency then existing and report the decision to the Throne. The Emperor accepts the advice without exception. Since there is no way to foretell who will become the Premier until the moment the report of the elder statesmen is submitted to the Throne, it is impossible in Japan for a certain organization, party or clique to monopolize power for any duration of time, and continue a particular plan or conspiracy. The so-called "Tanaka Memorial" referred to by a certain prosecution witness as evidence of conspiracy, is, we submit, a forgery and a travesty. Pertinent documents and witnesses will be produced to prove these points.

Section 2 of the preamble of the Indictment and paragraph 4, Section 6 of the Appendix of the Indictment seem to consider the Imperial Rule Assistance Association and the Imperial Rule Assistance Political Society as something akin to the Nazis in Germany or the Fascists in Italy. Nothing can be a greater misunderstanding of Japanese politics than this. Although this point has been partly proved by cross-examination of the witness produced by the prosecution, we think it necessary to prove our contention more conclusively by authoritative documents and witnesses, and expect to do so.

The prosecution refers to the Imperial Ordinance of 1936 to the effect that the Ministers of War and of the Navy must be selected from among generals and lieutenant generals or admirals and vice-admirals of the active list, and goes on to contend that the

purpose of the Ordinance was for the army to control the government and that the army utilized the Ordinance for the plotting of armed expansion of Japan. This is contrary to the real state of affairs. This Imperial Ordinance was promulgated after the February 26 Incident of 1936, a rebellion in which Premier Okada and other elder statesmen were assaulted. It was ~~known~~ at that time that, if some generals in the reserve list had ~~any connection~~ with any group of men concerned in the February Incident, and one of them happened to be appointed War Minister, that would be a serious matter for the safety of this state. This Ordinance was enacted to prevent the occurrence of that kind of thing. In other words, the purpose of the said Ordinance was to make a thorough purification of the army possible. As a matter of fact, the Ordinance was effective. Its result was, contrary to the prosecution's charge, to restrain those who insisted on using armed force illegitimately. On this point we are ready to present evidence. Briefly speaking, it is a misunderstanding of fact to think that there was any military organization which controlled the Japanese Government during the period specified in the indictment.

11. The defense will refute the charge of conspiracy among the accused for the conquest of the world in general (Count 45); domination of East Asia, the Pacific, Indian Ocean and regions adjacent thereto, (Count 1); or the control of China (Count 3); on the control of Manchuria, (Count 2). There are differences of age and environment among the accused. Some of them are army or navy officers^s, some are civil officers, some are dip-
Diplomats - ~~diplomats~~^s, and some are authors. They never had any chance to meet as a whole with any special object in view. They never had any occasion as a group to exchange their opinions on any such matters. As a matter of fact there were real differences and divisions of opinion among some of them. If some of them as a group were in any way related with the Manchurian Incident, the China Affair or the Pacific War, it was due to the fact that they were prominent personages when those incidents or hostilities which demanded concerted activities of the whole nation took place. There is no such fact nor supporting proof that the accused and certain divers persons, who have never been named by the Prosecution, who are not indicted, created a conspiring organization and by some method or other devised a common plan to conquer or dominate the world, East Asia, the Pacific Ocean, the Indian Ocean, China or Manchuria. We will produce evidence to disprove the existence of any such conspiracy of conquest or domination.

12. There is another point in this connection which the defense are ready to prove. It is a mistake to think that there was one common and premeditated plan throughout the Manchurian Incident, the China Incident and the Pacific War. They were separate events having separate causes. Persons who ~~were~~ concerned with one incident were different from the persons concerned with the others. There is no such fact that the former officials passed on their premeditated plans to their successors or that they were accepted by them. The most obvious thing is the difference between the Manchurian Affair on the one hand and the China Incident and the

Pacific War on the other. The Manchurian Incident came to an end in 1933 by the Tangku Truce. After that officials of the Chiang Kai-Shek Government concluded agreements with Manchoukuo with regard to customs, postal service, telegraph and railroad. In 1935 Chiang Kai-Shek promulgated the Good Neighbor Ordinance toward Japan. Mr. Hirota, Foreign Minister of the Okada Cabinet, negotiated with China and formulated the "Hirota Three Principles" including the recognition of the status quo of Manchuria and North China and secured the consent of the Chinese Government to discuss the details with those principles as the basis. It may be natural erroneously to suppose that the China Incident, which took place four years after the Tangku Truce, had been intentionally planned and executed by particular individuals with the same object as the Manchurian Incident in view. The necessary evidence to prove the above points will be produced.

13. In Division 1, various evidence will be produced in connection with Japan's internal politics. The Prosecution alleges that for many years, even previous to January 1928, the Japanese Army taught militaristic spirit to Japanese young men, and tried to cultivate an extreme nationalistic idea that the progress of Japan depended upon wars of conquest; also that the army enforced that educational policy in public schools, and concludes that this fact is evidence of the existence of a conspiracy. Nothing can be a greater mistake than such a view of Japanese education. The educational system in the public schools was modelled on the American system after 1872. The foundation of Japanese national ethics has since then been the synthesis of Japan's ancient tradition and China's Confucian teachings with Occidental ethics. In 1890, the Imperial Rescript concerning education was promulgated, in which certain virtues such as

loyalty, filial piety, universal love, justice, public spirit and the spirit of service were specified. It never included warlike spirit. The fundamental principle held by the Imperial family has always been peace, love and benevolence, excluding extravagance and encouraging simplicity and vigor; but this is different from the encouragement of war. It is true that after 1929 following the example of the United States and Switzerland, Japan adopted military drill in schools with the aim in view of developing discipline of mind and body, and to improve the character of youth. This was done in order to make up for the deficiency caused by retrenchment in armaments and military budgets by the Japanese Government and hence cannot be considered as an expression of aggressiveness. The foregoing was the fundamental educational policy and no Minister of Education had the power to modify it. There is nothing to prove that the Government or the army taught the people that the future of Japan depended on aggressive war.

Japan being a country of small area and incapable of self support because of meagre natural resources, there is no way for Japan other than immigration, foreign trade and industrialization in order to feed her rapidly increasing surplus population and to maintain her economy. Since immigration was restricted by many of the Western powers, Japan was forced to choose foreign trade and industrialization and she naturally adopted the appropriate method towards that direction, especially in East Asia, which because of propinquity and special interests it was natural for her to do.

Meanwhile under the stern and stress of world economic depression, England dropped off the gold standard in September 1931 and other countries soon followed her example. Since the British Imperial bloc was formed with the Ottawa

Conference in July 1932, the worldwide tariff war was intensified and trade barriers became serious. Notwithstanding, Japan still maintained the principle of free trade, and when the world currency and economic conference was held in June 1933 Japan participated in it with great expectation; and Viscount Kikujirō Ishii, the Japanese delegate, enthusiastically presented Japan's point of view. However, the conference was unsuccessful, the United States stand contributing heavily to that end.

In 1934 an Anglo-Japanese trade conference was proposed by Great Britain and was held. Although Japan sent her delegates to that conference, Great Britain insisted on the limitation and allocation of Japan's trade, not only within the British Commonwealth of Nations but even to third countries. Since it was impossible for Japan to accept such a proposal she withdrew from the conference and thus the negotiations ended fruitlessly. Consequently, with the declaration of Mr. Renshman, Secretary of Commerce, the whole British Empire restricted Japan's trade. Meanwhile a trade conference was held between Britain and the Dutch East Indies, and the latter adopted forceful measures to prevent Japanese imports and then proposed a Japanese-Dutch trade conference. Although this conference took place in June 1934, adjustment of Japanese-Dutch trade was extremely difficult since the position of Japan was different from that of England. On the other hand, the anti-Japanese movement in China also became intensified. Thus Japan, which had to depend on foreign trade for her existence, was faced with a grave situation.

Because of such economic stress throughout the world, Japan was compelled to turn to planned economy and the formation of an economic bloc for her economic self-autonomy.

In particular, the consecutive five year plan of the Soviet Union was keenly felt by Japan. Since she was considerably backward in heavy industry, she strongly felt the necessity of promoting this phase of her economy. Various measures of economic control and planning were adopted under such circumstances. They were in no sense premeditated preparations for the China Incident. So much less so with regard to the Pacific War. On these points we will produce evidence and statements of expert witnesses.

Before the war, freedom of speech was respected in Japan as much as in most other countries. However, it is a truism that the propagation of communism and ultra-nationalism has been prohibited by law since 1925. Japanese people wished to maintain the system of private property and they violently abhorred having the Imperial Household subjected to disrespect. The communists deny the system of private property and they intend to destroy the Imperial Dynasty. Since 1920, the movement of the Communist Party had become active in Japan and a subversive movement to destroy private property and the Imperial Dynasty began to take impetus throughout the country. It is only natural under such circumstances that a sovereign state should prohibit such a movement. It is neither a plan nor a preparation for war. This point can be easily proved by the fact that the Peace Preservation Law was proposed by a coalition government of the three parties which were regarded as liberals. The facts concerning the direction of thought and speech will have to be shown by producing evidence. It is needless to say that once war opens a certain amount of restriction on freedom of speech and other civil liberties becomes necessary for preventing espionage, and it is introduced in every country without exception. There should be

no confusion of thought on this point. The object of the thought control was not only the leftist movement mentioned above but also the rightist or ultra-nationalist movement. Some of the accused while in office were responsible for the control of such movements.

There arose in Japan about 1930-1931 a so-called reformation movement (Kakushin Undo). This movement was not necessarily aimed at expansion. It must be remembered, however, that the Japanese population was rapidly increasing year after year and was almost on the point of reaching one hundred million. Natural resources were extremely limited. And as a result of worldwide economic depression, commerce and industry as well as agriculture were facing serious difficulties. Party politics existed at that time; and the Seiyukai and the Minseito alternately formed the cabinets. But the method of political contest was unfair and instances of political corruption were exposed day after day. Being excited and irritated by these facts and incidents, hot-headed young men and young officers appealed to direct action. The evidence to show the motive of this movement was partly destroyed by air raids to our regret but the remaining part and witnesses will be produced to show that the movement did not aim at aggressive war. At this opportunity it is worthwhile to point out that some of the accused contributed to suppression of this movement.

14. The Prosecution presents the national defense plans of Japan since 1937 as evidence of Japan's aggressive design. But armaments are always relative as has been said before. It is not possible to determine whether the national defense plan of Japan was aggressive or not until and unless it is studied in comparison with the plans of other countries. In 1937 the military neighbors of Japan were China and the

Soviet Union. As to China, Japan never proposed to come to an over-all conflict and therefore had no comprehensive plan of operations; as to Russia, we shall prove the nature of Japan's military plan by presenting her second and third five-year plans and the condition of the Far Eastern Army of the Soviet Union after 1936. The military or naval staff of every country makes annual plans in consideration of potential enemies but it is needless to say that the existence of such plans does not indicate that the country has the intent to wage war against other nations. It is also possible to prove that the intent of Japan was not aggressive by contrasting Japan's naval plans after the London Naval Conferences with those of the United States and the British Empire.

15. The nature and scope of the right of self-defense is a question of international law, and therefore no evidence is necessary. However, the question to what extent the right of self-defense is reserved in a particular treaty may be answered in the light of circumstances surrounding the conclusion of the treaty. The defendants are prepared to produce the evidence relative to the negotiation of the Kellogg-Briand Pact, the official declarations of the parties concerned and the reservations of the Governments at the time of the conclusion of the Pact, which will be of assistance in delimiting the right of self-defense implicit in the said Pact.

This issue of the interpretation of the right of self-defense was also raised at the time of the negotiations between Secretary Hull and Ambassador Nomura in 1941. At that time the United States showed its own view as to the extent of the right of self-defense. The defense are prepared to produce records concerning the United States' view on

self-defense.

It is also said that "every nation is competent to decide whether circumstances require recourse to war in self-defense." Under international law it is well established that the party invoking such right has the sole and absolute discretion to determine the valid existence of such right.

16. It will be a difficult matter for foreigners to understand the relation in Japan between the high command and the authority of ordinary state affairs. It is, nevertheless, important to illuminate this relationship in order to determine the responsibility for any act or omission in the present case. This depends upon the interpretation of the Constitution of Japan, especially Articles 11 and 12 and upon established custom in this country. With regard to military affairs, the extent of the respective jurisdiction and responsibility of the military command (the Chief of the Army General Staff and the Chief of the Navy General Staff) and of the Minister of War or the Navy is an important issue. The jurisdiction of various other governmental organs must also be considered in this connection. The defendants are prepared to produce witnesses to clarify this point. The nature of command and the duty of obedience in the Japanese Army are different from those of other countries. This will be considered separately with regard to peace-time and war-time.

17. Concrete evidence will be submitted to show the connection with the interpretation and application of the Potsdam Declaration and the Instrument of Surrender.

A. Japan accepted the Potsdam Declaration which was proposed by the Allies on July 26, 1945 and thereafter surrendered. This Tribunal was created as a result of Japan's capitulation by the Instrument of Surrender. Although Japan surrendered "unconditionally" in the sense that she accepted the Potsdam Declaration as a whole we cannot forget that the Potsdam Declaration itself constitutes a condition as between the Allied Powers and Japan. Article 5 of the Potsdam Declaration provides: "The following are our terms. We will not deviate from these Articles." The words "unconditional surrender" are used in Article 13 of the Declaration and in paragraph 2 of the Instrument of Surrender. In either case it refers to the surrender of the Japanese armed forces only. That is to say, the Japanese forces were ordered to surrender to the Allied forces without any condition or reservation. It cannot be said that the other parts of the Potsdam Declaration lose their binding power simply because of the words "unconditional surrender" used in connection with the armed forces.

B. The meaning of the words "war crimes" used in Article 10 of the said Declaration remains an important issue. We are ready to prove in what sense Japan, that is to say, Japanese responsible authorities, understood the term in issue at the time of accepting the Declaration. Corroborating evidence also will be adduced to prove the general understanding of the term "war crimes" at the end of July or beginning of August 1945 in Japan as well as all over the civilized world. This will show that the said term as known to international law did not include "crimes against peace" and "crimes against humanity." This seems to be necessary in supporting the position of the Defense that this Tribunal has no jurisdiction to entertain Counts invoking Sections (a) and (c) of Article 5 of the Charter creating this Tribunal.

C. By accepting the Potsdam Declaration, Japan surrendered with respect to the Pacific War, in which she had been engaged. She had no intention to surrender with respect to the Manchurian Incident, the Lake Khasan Incident or the Nomonhan Incident. In order to prove those points, the documents showing that the Manchurian Incident had been settled by 1935, the documents showing that the Khasan Lake Incident or Nomonhan Incident had been settled by specific respective agreements, and the documents showing that a neutrality treaty was concluded between the Soviet Union and Japan in April 1941 will be presented. The appended declaration to the neutrality treaty is very important. It provides in part that "the Soviet Union respects the territorial integrity and inviolability of Manchoukuo."

D. Additional evidence will be produced with reference to the interpretation and application of the Potsdam Declaration. This will be done for the following reason.

When one party induces the other to surrender while employing certain mode of warfare, it is naturally presumed that the former induces surrender assuming his own particular mode of warfare to be legitimate. If the word "crime" happens to be used in such inducement to surrender, that word should not include such mode of warfare as is being used by that party while inducing surrender. This we take to be a correct interpretation of any such inducement or declaration. Therefore, the type of warfare which the Allied forces openly employed against Japan should be excluded from the "crimes" provided for in the Potsdam Declaration. This will determine the limit of war

crimes to be dealt with in this Tribunal. Records, photographs and many witnesses will be produced in order to show the type of warfare conducted by the Allied Powers.

18. The Prosecution contends that aggressive war has been an international crime for a long time and gives a definition of aggression. In order to support its theory of aggression it goes on to cite various treaties and agreements. As John Bassett Moore has said in his "Appeal to Reason", it is impossible to define what is aggression. We are not going into a legal argument now. We expect to have an opportunity to discuss legal problems later on. However, we think it is appropriate at this moment to point out certain omissions in the facts by the Prosecution. It first invokes the Hague Convention I of 1907. But this treaty does not make good offices and mediation an absolute duty. The contracting parties are only expected to submit their disputes to good offices or mediation "as far as possible" or "as far as circumstances allow". The Prosecution next refers to the draft treaty of Mutual Assistance, which was discussed at the Fourth Assembly of the League of Nations in 1923. The said draft was dropped at the Fifth Assembly in 1924 and has never become a treaty. Therefore it is not binding on any power. The Prosecution refers to the Geneva Protocol of 1924. This was signed by the delegates but since Great Britain withheld ratification, no state ratified it. Thus the Geneva Protocol has never become a treaty. This fact proves that it has been thought too premature as well as too difficult to define and to determine aggressive war as an international crime. The Kellogg-Briand Pact of 1928 does not provide that aggressive war is an international crime.

19. The Indictment from Count 37 on provides for a group of crimes under the title, "murder", and charges crimes of murder against the defendants for the loss of lives due to the act of war. The Defense contends that the loss of lives due to the act of war does not constitute murder. This, we believe, is an accepted theory of international law and is too obvious to call for any authority. The state of war in this instance came into existence when the first shot was fired. Therefore, we will produce evidence to show that the loss of lives referred to in Counts 37 to Count 44 in the Indictment occurred after the state of war existed.

The Prosecution asserts that in all cases of aggressive war those who are in official position should be treated as common felons; that is, murderers, brigands, pirates and plunderers and should be punished as such. It goes on to say that such is a generally recognized principle of international law. Does the Prosecution refer to the primitive age in which international law did not exist? Since international law came into existence there has always been a distinction between war as an act of sovereign states and acts of brigands or pirates. This seems to us the first principle of international law.

20. In case a war is waged by the will of the state, it becomes an important question in international law whether individuals who are in official positions of the state are ipso facto criminally responsible. The Allied Powers contend that this World War II was fought by them for the maintenance of international law. We take it, therefore, the Allied Powers will have no objection to the strict interpretation of international law. The Prosecution

refers to this point several times in the opening statement. It maintains this although it is fully aware of the danger of proceeding without precedents. For our part, we are convinced that international law as it existed from 1928 to 1945 ^{imparts} no responsibility to individuals in official positions for the act of the state. Even the new Charter of the United Nations, the latest pronouncement of international law, does not propose such a doctrine. Therefore, we believe that the provisions concerning individual responsibility in this Charter, something which the Potsdam Declaration we submit did not contemplate, are ex post facto law. For this reason we will produce evidence to show that international law as it existed during the period indicated by the Indictment did not impute criminal responsibility to individuals for the act of the state.

21. The Prosecution frequently compares incidents which occurred during the Pacific War with acts of Germany during the European war. It asserts that terrorism and atrocities occurring during the Pacific War were of the same type that Germany committed, and that these acts were not incidental errors on the part of the individuals but premeditated acts committed in pursuance of a national policy. Counsel for the Defense are prepared to show that the central government and high command strongly desired that the rules and customs of war be strictly observed and that civilians and even enemies who had given up arms, be treated humanely. For that purpose, "The Battlefield Manual" was issued in January 1943 and distributed to all soldiers, and violators were tried by Court Martial. The Army and Navy Chiefs of Command at the front were always emphatic in stressing this point. We must admit, however, that during the later period of the

war when the communications with the home country were cut, battle fields isolated, orders from the commanding officers became impossible, food became scarce and the very existence of the Japanese soldiers precarious, or when they met with cruel guerrilla warfare by natives inhumane acts, may have been committed. As to the prisoner of war labor, of non-commissioned officers and officers, we contend the orders were that such labor should be performed voluntarily. On these matters we are prepared to produce concrete facts in Division 1. Intentional violation of human decency as was alleged to have been committed against the Jews in Germany was never present in Japan. We are prepared to produce evidence to explain the difference between the war crimes of Germany and the alleged acts of the accused.

22. Division 2 is provided for the purpose of disproving crimes as alleged by the prosecution to have been committed in Manchuria since 1931. It relates to Count 2, Appendix A, Count 18 and Count 27. Count 44 also relates to this division to some extent. There is ample evidence which the accused will present under this division.

The Lytton Report which the prosecution presented, says in part: "...the issues involved in this conflict are not as simple as they are often represented to be. They are, on the contrary, exceedingly complicated, and only an intimate knowledge of all the facts, as well as of their historical background, should entitle anyone to express a definite opinion upon them"

23. In order to show the special conditions in Manchukuo, Japan's special rights and interest in Manchuria and their legitimacy will be proved. Why did Japan acquire special rights and interests in Manchuria? Why did the Japanese go to Manchuria? Japan is a country of small area and a large population. As long as emigration was possible the problem was hoped to be partly solved by that. In 1908 Japan's emigration to the United States

was virtually stopped by the so-called "Gentlemen's Agreement". At that time Mr. Jutaro Komura, Foreign Minister, spoke at the Imperial Diet as follows: "In order to prevent our people from scattering around remote foreign territories it has become necessary to concentrate them to this district (Manchuria) and administer them with their joint co-operation --- The Japanese government in consideration of these points will follow the established policy with regard to the immigration to the United States and Canada, and is faithfully enforcing the restriction of immigrants." This declaration has been taken in Japan as having previously been understood by the United States. With regard to Japan's relations with the United States an agreement was reached between Mr. Lansing, Secretary of State of the United States and Mr. Ishii, Japanese representative, on December 1917. It says in part: "The Governments of the United States and Japan recognize that territorial propinquity creates special relations between countries, and, consequently, the Government of the United States recognizes that Japan has special interest in China, particularly in the part to which her possessions are contiguous." The agreement was made in the form of exchange of notes. The agreement was cancelled later but before its nullification our people had done much in Manchuria. This achievement cannot be taken away by the nullification of the Lansing-Ishii Agreement.

24. At that period the authorities in Manchuria maintained their power in cooperation with Japan. Since 1925 the national rights recovery movement arose throughout China. The situation in Manchuria was vitally affected. In 1928 Chang Tso-Lin was killed and the Manchurian authorities adopted the Chinese Republic flag. As soon as the Kuo-m'in-tang (Chinese Nationalist Party) stepped into Manchuria Japanese-Manchurian disputes continuously increased. In 1931 there were more than three hundred pending problems. We will show these facts by evidence.

25. Japan had a legal right under treaties and agreements to maintain the Kwantung Army in Manchuria in order to protect her rights and interests in Kwantung Peninsula and Manchuria. In 1931 the total of the Kwantung Army consisted of eight battalions of infantry, two batteries of artillery and one independent garrison (six battalions of infantry) making 10,400 men in all, it being less than the number of fifteen soldiers per kilometre of railway lines in Manchuria, provided for in the additional articles to the Portsmouth Treaty of 1905. The forces under the control of Chang Hsueh-Liang, on the other hand, consisted of 268,000 of the regular army and hordes of irregulars. The Kwantung Army was a small force of 10,400 encircled by more than 200,000 Chinese. Its duty was to protect the South Manchuria Railway which extended one thousand kilometres, and Japanese nationals numbering one million two hundred thousand scattered all over the vast expanse of Manchuria. Under these circumstances in the emergency that arose it was necessary for the Kwantung Army to take prompt measures of self-defense.

26. The prosecution contends the occurrence at Mukden on September 18, 1931 was a planned action on the part of Japan. The defense will produce evidence to prove the true cause of the incident, which resulted in armed conflict. Once a conflict occurred, the Kwantung Army for its own self-defense and for the execution of its own duty, had to defeat the Chinese forces. We will show the details of the incident by producing the testimony of General HONJO. The government of Japan did not wish to see the situation aggravated and tried its best to stop the incident, but the situation grew from bad to worse against its will. The truth of this situation and the attitude of the League of Nations and of the United States will be explained by producing pertinent documents, and has already been shown by testimony and documents already presented by the prosecution.

27. While the Kwantung Army was fighting with the Chinese forces for self-defense, the inhabitants in Manchuria started a self-rule movement for Manchuria for various motives, such as the consideration for the welfare of the various peoples, anti-communism, the desire of the Mongolian people for independence from the Chinese Republic, the discontentments of the various generals against Chang Hsueh-Liang, and the desire to restore the Chin Dynasty. In February 1932 the Administrative Committee of the North East provinces was created, and on March 1, the government of Manchoukuo was inaugurated. The outline of these activities will be explained and proved.

28. After the establishment of Manchoukuo the Japanese were permitted to acquire Manchoukuoan nationality. It is true that some number of the Japanese nationals became officials, and directly participated in the development of the country. But these all were after the new State was created. In September 1931 the Minister of Foreign Affairs and the Minister of War of Japan instructed the Japanese officials in Manchuria not to participate in the establishment of the new State. In other words, notwithstanding the Lytton Report, the birth of Manchoukuo was the result of a voluntary independence movement by the inhabitants of Manchuria. Evidence will be produced to prove this fact.

29. The Manchurian incident was settled in May 1933. During 1935-1936 China was inclined to recognize the de facto status of Manchuria. Other countries began to recognize Manchoukuo. Especially the Soviet Union, which now sends prosecutors to this Tribunal, agreed to respect the territorial integrity and inviolability of Manchoukuo in 1941.

30. The third division concerns China. The Counts relating to this division are Counts 3, 6, 19, 27, 28, 36, 45 to 50, and 53 to 55.

The responsibility for the Marco Polo Bridge Incident does not lie upon Japan. It will be noted that Japan along with the other powers had a right to station some armed forces in North China and was allowed to hold field maneuvers under the Boxer Protocol of 1901 and its appended notes. Moreover, in this area Japan had other important lawful interests and a considerable number of her nationals residing there. Had the Incident been settled locally, as was desired by Japan, the conflict would not have been aggravated to such a magnitude and there would not have arisen any question of "aggressive war". Therefore, we will also prove that China was responsible for the enlargement of the Incident and that Japan throughout the whole Incident adhered to the policy of non-aggravation and tried its best to settle the question locally.

On July 13 the Konoye Cabinet declared as follows: "Even now the Army will adhere to the policy of non-aggravation and local settlement and will avoid to its utmost effort any action which might lead to a war. For this reason the Japanese Army has approved the conditions submitted by the representatives of the 29th Army signed on 8 P.M. of the 11th, and will watch its execution". But China did not stop hostile acts. The assault at Lanfong, the Kwan An Men Incident, the atrocities at Tungchow, etc. continuously occurred. China began to take on an organized war attitude. On July 12, Generalissimo Chiang Kai-Shek ordered a mobilization applicable to a large area. Meanwhile, the concentration of the Chinese forces in North China became increasingly intense. The Japanese forces

in Fengtai were encircled and violently attacked by the Chinese forces. On July 27 the Japanese forces in China decided to take up arms for self defense. The actual conditions during this period will be explained and proved by documents and witnesses.

Japan notwithstanding still persisted in the policy of non-aggravation. Chiang Kai-Shek continued to strengthen his forces. On August 15 the Total Mobilization Order was issued. The General Headquarters was established; Chiang Kai-Shek himself became Commander-in-Chief of the Army, Navy and the Air Forces. The whole country was divided into four war districts: First War District (Hopei-Charhar), Second War District (Charhar-Shansi), Third War District (Shanghai), Fourth War District (South China), for each of which respective army forces were allocated, and thus a total war basis against Japan was completed.

It can be said that hostilities on a large scale commenced at this time, although even then diplomatic relations between the two countries were continued. Because of the menacing conditions just described, on August 31 Japan sent three divisions to North China in order to safeguard her lawful interests. The name of the Japanese Army in China was changed to the "Japanese Forces in North China". The commander of the Japanese Forces in North China was instructed to secure the stabilization of the Peiping-Tientsin area and to break down the warlike intention of the opposition and to bring the conflict speedily to an end. Even at this stage Japan only sought to restore friendly relations and order and tranquillity in North China and abandonment of anti-Japanese policy on the part of China.

31. The Japanese government first designated this conflict "The North China Incident" because it thought its

extent could be limited to North China. But it spread to Middle China in August contrary to Japan's desire, the cause of which will be explained later. China, ignoring the Shanghai Truce which was concluded in 1932 by the good offices of British, American and other representatives, constructed military bases in an unfortified area, and concentrated forces of more than 50,000, while the Japanese Marines in that area were not more than 4,000, thereby jeopardizing Japanese lives and interests there.

Lieutenant Oyama, Company Commander of the special marine detachment of the Japanese Navy, was wantonly shot to death by the Chinese Army. On August 15 Japan decided to send troops to Shanghai for the protection of lives and properties of her nationals. It was under such circumstances that the conflict in Middle China started. In other words, it was China that aggravated the incident and expanded its scope and magnitude. We will produce witnesses concerning these facts for the consideration of the Tribunal in determining the responsibility for these hostilities.

32. This further conflict with the Republic of China was designated as the China Incident and not as the China War. A state of belligerency was not declared nor recognized by either of the parties or in fact by any other Power. Actually Generalissimo Chiang Kai-Shek did not declare war upon Japan until the Pacific War broke out in 1941. This should appear, we presume, rather strange to the Occidental mind. The objective of this conflict on our part was to induce the Chinese leaders then in power to reconsider their stand against Japan, thus restoring to a natural and proper state the disturbed Sino-Japanese relations. It was, however, the attitude

assumed by the Communist Party of China that actually gave rise to a decided anti-Japanese movement in the greater part of the Republic. Moreover, Generalissimo Chiang Kai-Shek had come to countenance various activities of the Communists ever since the Sian Incident in which his sensational kidnapping was successfully carried out. The Japanese Government regarded this new step on the part of the Generalissimo as a lamentable deviation more or less short-lived. At the inception, there was neither diplomatic rupture nor disrupted treaty relations between Japan and China. Members of the Chinese army who surrendered themselves to our hands were released and those nationals of the Republic of China residing in Japan at that time were not treated as enemy persons but were allowed to pursue their own occupations unmolested. One of our aims in not declaring war with the Chinese Republic was not to restrict the rights and interests of the third powers by the application of rules of war. Nevertheless the hostilities, against Japan's desire, spread far and wide. Consequently it became quite unavoidable that those nationals of neutral Powers who happened to be in the Japanese occupied territories should suffer therefrom to some extent. Hence the conclusion of an agreement known as the Arita-Craigie Agreement between Japan and the United Kingdom.

33. Had there been waged a declared war the question of application of the Nine-Power Treaty to the situation would never have been raised, for treaties would cease to be in force automatically or at least be suspended during hostilities so far as China and Japan were concerned. As a matter of fact, however, declaration of war was not resorted to by the Republic of China or by the Empire of

Japan, thus leading to an anomalous situation wherein the question of application of the said treaty became an issue.

There had occurred in the Orient five very extraordinary happenings within the period of fifteen years between 1922, when the Nine-Power Treaty was concluded, and 1937 when the China Incident broke out. The first of the five items is this: The Republic of China, after the conclusion of the Nine-Power Treaty, made it a national policy to oppose Japan and insult her in every way possible, and illegal boycott of Japanese goods was resorted to generally. China went so far as compiling text books for her public schools so that anti-Japanese sentiments were widely disseminated among the younger generation.

The second is: The Communist Internationale which determined its new strategy against Japan during those years, and the Communist Party of China which acted in conformity with the directives of the former; also the acquiescence of the Chiang Kai-Shek regime in the latter's behavior.

The third is: The resolution to reduce Chinese forces adopted at the Washington Conference was not only not carried out but, on the contrary, war lords and military cliques in China raised and maintained huge bodies of troops many times greater than those existing before. Besides, they made extensive preparations for war with Japan by importing modern arms and implements of war in large quantities.

The fifth is: The world economy since the conclusion of the Nine Power Treaty was seen to veer from economic internationalism to national protectionism.

The Nine-Power Treaty is, it must be noted, a treaty without a provision as to expiration. What kind of tales these five happenings tell will be clarified later; evidence to be presented in due course will speak for itself. Here it must be stated, however, that under these circumstances the Nine-Power Treaty had become so unrealistic that its strict application to the situation was impossible. Hostilities were going on, though neither China nor Japan declared war upon the other. In the territory of the Republic of China, whether it was under Japanese occupation or not to carry out the provisions of the said treaty to its very letter was practically impossible. The defense contends that failure strictly to adhere to the treaty in these given circumstances does not necessarily constitute a crime and upon that thesis the defense will prove that the five points above stated indisputably so altered the situations contemplated by the said treaty as to render its effective application nugatory.

34. The Prosecution has made it a point to charge the accused as being responsible for economic aggression. The defense will show that there had been no economic aggression in China. Furthermore, we submit that an aggression in the economic sense does not constitute a crime.

35. Now about the assertion of the Prosecution concerning narcotic drugs. The prosecution avers that Japan caused an influx of narcotics into China and by this means wanted to crush the war efforts of the Chinese on the one hand and on the other turn the proceeds from the sales of the drug into its war chest.

titles.

The fourth is: The National power of the U.S.S.R. was expanded tremendously since then. The Union of Soviet Socialist Republics not being a party to the Nine-Power Treaty and never under the commitment of the said treaty, made its pressure felt along the entire Sino-Soviet boundaries extending not less than 3,000 miles. In fact, a very wide area comprising Outer Mongolia was under the influence of the U.S.S.R. although China still claimed sovereignty.

We invite the attention of the Tribunal to the fact that here in Japan we have had special experience in the gradual reduction of opium eaters in Formosa. In Formosa a government monopoly and control of the said drug was set up throughout the years when the island was under our jurisdiction and Japan by such policy put an end to illicit traffic in opium and through these means reduced by degrees the number of addicts.

Japan, wherever possible, applied this policy to China where the use of drugs is an ancient and widespread custom principally due to the traffic engaged in by the Western Powers. Concrete facts and figures in this connection will be given as well as to show that proceeds from the sale of opium in China were not utilized by Japan as part of war expenditures. Finally, let it be said that the accused had no connection whatsoever with such matter

36. Atrocities perpetrated by some Japanese troops in several parts of China, while admittedly most regrettable, are believed to be unduly magnified and in some degree fabricated. We shall endeavor to clarify this matter by showing the true condition. The Japanese government and the responsible commanders made it a policy to prevent such occurrences and where such deplorable facts came to their knowledge, to mete out due punishment to the perpetrators of the crimes. Maintenance of friendly relations with the Chinese people was and still is one of the salient principles of our national policy. It is quite unthinkable that the accused, some of whom were holding key positions in the Tokyo government or entrusted with important expeditionary forces abroad should lightly commit or disregard such misconduct. These charges laid upon some of the accused are, we believe, without foundation and we shall leave no stone unturned to prove that none of the accused ever ordered, authorized or permitted such acts or deliberately and recklessly disregarded his legal duty in this connection.

37. As to the matters related to the Soviet Union, aside from the conspiracy counts the specific counts are 17, 25, 26, 35, 36, 51 and 52. That these accusations are beyond the pale of this Tribunal has been already pointed out heretofore. Especially the Changkufeng and the Nomonhan Incidents are closed issues between the Powers concerned. This is clear beyond peradventure of doubt by the conclusion of the treaty of neutrality between Japan and the USSR in April 1941. Both the Changkufeng Affair and the Nomonhan Incident resulted from ambiguities concerning the boundaries between Manchuria and the USSR. Needless to say these border incidents do not fall in the category of an aggressive war. The frontiers between Manchukuo and the Soviet Union once defined, the outstanding differences were settled then and there. That the boundaries Japan defended were ultimately right can be verified by the evidence which we shall present. It may be added here that these disputes had no relation to the policy of the Tokyo Government or the plans of the Kwantung Army. True circumstances of our despatch of troops on these two occasions will surely demonstrate that Japan had no intention of waging war against the USSR. We shall also show that the Japanese government followed an "absolute pacific policy" vis-a-vis Russia.

38. The prosecutors representing the Soviet Union endeavored to establish an aggressive intention on the part of Japan by displaying the 1941 annual program of the General Staff. But let it be remembered that the said program was hypothetical and was not to be put into execution unless the hypothetical war, for which the program was made, materialized. To our mind, any Power may devise such programs without arousing the suspicion of others. This is purely a matter all the fighting services of all nations are duty bound to do. Therefore, we can never conclude from the mere existence of such a program ominous intention by any government. As stated in my

37. As to the matters related to the Soviet Union, aside from the conspiracy counts the specific counts are 17, 25, 26, 35, 36, 51 and 52. That these accusations are beyond the pale of this Tribunal has been already pointed out heretofore. Especially the Changkufeng and the Nomonhan Incidents are closed issues between the Powers concerned. This is clear beyond peradventure of doubt by the conclusion of the treaty of neutrality between Japan and the USSR in April 1941. Both the Changkufeng Affair and the Nomonhan Incident resulted from ambiguities concerning the boundaries between Manchuria and the USSR. Needless to say these border incidents do not fall in the category of an aggressive war. The frontiers between Manchukuo and the Soviet Union once defined, the outstanding differences were settled then and there. That the boundaries Japan defended were ultimately right can be verified by the evidence which we shall present. It may be added here that these disputes had no relation to the policy of the Tokyo Government or the plans of the Kwantung Army. True circumstances of our despatch of troops on these two occasions will surely demonstrate that Japan had no intention of waging war against the USSR. We shall also show that the Japanese government followed an "absolute pacific policy" vis-a-vis Russia.

38. The prosecutors representing the Soviet Union endeavored to establish an aggressive intention on the part of Japan by displaying the 1941 annual program of the General Staff. But let it be remembered that the said program was hypothetical and was not to be put into execution unless the hypothetical war, for which the program was made, materialized. To our mind, any Power may devise such programs without arousing the suspicion of others. This is purely a matter all the fighting services of all nations are duty bound to do. Therefore, we can never conclude from the mere existence of such a program ominous intention by any government. As stated in my

earlier remarks, military preparations in themselves will not prove the existence or non-existence of an aggressive intention unless they are compared with similar preparations of other Powers. We will prove that the USSR had a plan of operation in 1936 by which simultaneous attacks upon Germany and Japan were contemplated. After 1939 when the Nomonhan Incident occurred, the Soviet armed forces operating east of Lake Baikal were to be doubled over those maintained by us in Manchuria and Korea. The Prosecution also stressed the presence of Japanese reinforcements in Manchuria during 1941. Japan kept some forces in Manchuria after 1941. That is quite true. However, these forces were meant solely for our defense. In support of this assertion there will be no better evidence than the above stated reinforcement plans of the USSR coupled with the maneuvers by that army along the borders of Manchuria and the USSR during that period. Special mention should be here made that tremendous forces of the Soviet Union trespassed across the borders from the south of Hutung in the early part of August 1945 and actually invaded Manchuria. The decision for such an aggression was made as early as February 11, 1945, at Yalta. This was clearly in violation of the neutrality treaty still in force between the USSR and Japan. That our defensive measures adopted at that time in Manchuria were justified will be conclusively shown.

39. We proceed to division V, the Pacific War, involving Counts 1, 4, 5, 7 and 16, Counts 20 to 24, inclusive, Counts 29 to 34 inclusive, Counts 37 to 43 inclusive, and Counts 53 to 55 inclusive. For more logical presentation the subject matter of some of the above counts will be treated separately later in greater detail.

40. There existed before the war close relations between the three Powers, Germany, Italy and Japan. This relationship was by no means made in anticipation of the Pacific War. We shall submit adequate evidence in order to prove this point. The seventh Congress of the Communist Internationale planned its primary destructive objectives against Germany and Japan and consequently they were obliged for their self-protection to cope with this situation. Especially for Japan, this was a really alarming development.

earlier remarks, military preparations in themselves will not prove the existence or non-existence of an aggressive intention unless they are compared with similar preparations of other Powers. We will prove that the USSR had a plan of operation in 1936 by which simultaneous attacks upon Germany and Japan were contemplated. After 1939 when the Nomonhan Incident occurred, the Soviet armed forces operating east of Lake Baikal were to be doubled over those maintained by us in Manchuria and Korea. The Prosecution also stressed the presence of Japanese reinforcements in Manchuria during 1941. Japan kept some forces in Manchuria after 1941. That is quite true. However, these forces were meant solely for our defense. In support of this assertion there will be no better evidence than the above stated reinforcement plans of the USSR coupled with the maneuvers by that army along the borders of Manchuria and the USSR during that period. Special mention should be here made that tremendous forces of the Soviet Union trespassed across the borders from the south of Hutung in the early part of August 1945 and actually invaded Manchuria. The decision for such an aggression was made as early as February 11, 1945, at Yalta. This was clearly in violation of the neutrality treaty still in force between the USSR and Japan. That our defensive measures adopted at that time in Manchuria were justified will be conclusively shown.

39. We proceed to division V, the Pacific War, involving Counts 1, 4, 5, 7 and 16, Counts 20 to 24, inclusive, Counts 29 to 34 inclusive, Counts 37 to 43 inclusive, and Counts 53 to 55 inclusive. For more logical presentation the subject matter of some of the above counts will be treated separately later in greater detail.

40. There existed before the war close relations between the three Powers, Germany, Italy and Japan. This relationship was by no means made in anticipation of the Pacific War. We shall submit adequate evidence in order to prove this point. The seventh Congress of the Communist Internationale planned its primary destructive objectives against Germany and Japan and consequently they were obliged for their self-protection to cope with this situation. Especially for Japan, this was a really alarming development.

Communism was engulfing our neighbor state, China, instigating political and social revolution. Assistance was extended from the Soviet Union in the shape of Russian technique of revolution as well as personal emissaries. These activities have been in progress ever since 1923 when Dr. Sun Yat-sen and M. Joffe issued a joint declaration expressing mutual sympathy between the two parties. This was an extremely dangerous situation for the well being of the Japanese Empire. Thus followed the joint defense against communism by Japan, first with Germany and then with Italy. The proposal of joint defense of China and Japan against communistic activities was enunciated in three principles by Mr. Hirota, Foreign Minister. These principles were included later in the Kono statement in 1938. In defending against the menace of communism, since the interests of Germany and Japan were identical, the two Powers concluded an agreement on November 25, 1936, known as the Anti-Comintern Pact. Needless to say, this Pact was not made in anticipation of the Pacific War. In Article 2, the Pact stipulates that, "The High Contracting Parties will jointly invite third States whose internal peace is threatened by the subversive activities of the Communist Internationale to adopt defensive measures in the spirit of this agreement, or to take part in the present agreement." Again, the so-called secret understanding attached to this instrument never aimed at aggression against any third party. The understanding merely provides that the parties will not take such measures as may lighten the burden of the USSR if and when one of the parties should become the object of an unprovoked attack by it, and is entirely negative in nature. In 1939 negotiations were entered into in an attempt to strengthen the Anti-Comintern Pact, but they were abruptly ended by the unexpected conclusion of the German-Soviet non-aggression treaty. These negotiations did not have for their object an unfriendly attitude toward Great Britain and America.

The Tri-Partite Pact between Japan, Germany and Italy was given wide publicity, but its stipulations are quite simple. War between Japan and America was also never made its object. Rather

it was the very avoidance of war between America and Japan that was contemplated in the agreement. The evidence will prove that there was no effective collaboration between Germany and Japan and Italy and will emphasize that Germany urged Japan to enter the war against Russia. This Japan refused to do.

Germany sought the assistance of Japan in their war against Britain. Japan refused to cooperate with Germany, but acted independently. Germany negotiated the Tri-Partite Pact to keep the United States out of the European war. This was not accomplished. The evidence will show that General Marshall stated in his annual report to the President of the United States during the war that there was no military cooperation between the two countries.

41. Japan's planned economy and military and naval preparations prior to the fall of 1941 were defensive in nature and also not undertaken in anticipation of the Pacific War. Comparison of the British and American navies and their programs with that of Japan, as well as the study of the annual programs of the Japanese naval command, will conclusively disclose per se the latter's non-aggressive purpose. The Prosecution asserts that the Japanese Navy constructed in the mandated territories fortresses and established bases of operations in violation of the terms of the mandates and treaties. But this, too, we maintain is without foundation. A fortress must be provided with specific defensive facilities against attacks from land, sea and air, while a base of operations is incomplete unless it is equipped with supply facilities for providing the fleet in action. We shall show that what were installed actually were either communication facilities of peaceful nature or temporary establishments for naval maneuvers, all of which were permissible.

42. Much of the atrocities and cruelties alleged to have been committed by Japanese forces against prisoners of war did not come to the knowledge of many of these accused until they were disclosed in this Tribunal. Others had no authority to restrain them even though they were aware of the fact. Again, others did their best to restrain and punish the perpetrators of such crimes.

Evidence will show that there was neither the opportunity nor available means to stop them before the crimes were committed. We shall submit evidence that no defendant ever formulated a common plan, ordered, or authorized or permitted atrocities or deliberately and recklessly disregarded his legal duty to take steps to prevent observance of the laws and customs of war in this respect.

43. Coming now to the causes of the Pacific War itself, a situation inviting the closest and most impartial scrutiny, we shall prove that it ensued because of the supreme necessity of Japan to invoke the right of self-defense. With your permission, let us remind this Honorable Tribunal that since 1937 Japan was unwittingly involved in large-scale hostilities tantamount to war with China, but which were treated by the world at large as being "short of war". We naturally expected that third Powers would recognize the peculiar situation. In fact, Great Britain did so in the joint declaration with the Japanese Government dated July 22, 1939, issued as a result of the Tientsin Incident and declared that His Majesty's Government fully recognized the actual situation in China where hostilities on a large scale are in progress. In what way the Washington Government regarded this situation we were not sure, but suddenly on July 26, 1939, notification of abrogation of the Treaty of Commerce and Navigation, a firm basis of the trade relations between the two countries since 1911 was received. Misunderstanding began to grow. From that time on the United States brought to bear upon Japan every kind of pressure and intimidation. The first was economic pressure. The second was the help extended to the Chiang Kai-shek regime with which Japan was in a life and death struggle. The third was the progress of encirclement by the United States, Great Britain and the Dutch East Indies; in concert with China a ring was thrown and tightened by them around Japan. These three steps after 1939 were adopted one by one, their intensity increasing in vigor as time went on. A typical example of economic pressure thus brought to bear upon us Japanese will be recited here. In December 1939 the moral embargo was extended in scope, and in

addition, aircraft and its equipment and instruments and machinery for construction of aircraft and for refining gasoline were added to the prohibited list. During July 1940 the Washington Government put an embargo on scrap iron. Considering the system of iron production then prevailing in Japan, scrap iron was an item of crucial importance. A heavy blow was thus dealt to this key industry of Japan. In August of the same year, the United States further put restrictions on the export of gasoline for aviation purposes. Upon the whole, Japan's yearly need of oil was estimated at 5,000,000 tons, the very minimum required for the nation's subsistence including her national defense. Since its annual home production of this fuel was not more than 300,000 tons, this deficit had to be made good with imports from abroad. By this time, the only available source was the Dutch East Indies. Accordingly a mission headed by Mr. I. Kobayashi, Minister for Commerce and Industry, was sent there and later Ambassador Yoshizawa was ordered to continue the thread of negotiations with the Dutch East Indies authorities at Batavia. But all these efforts came to naught, because the leaders of the Dutch Indies were working in close concert with America and Great Britain. The same kind of obstacles were also interposed by the authorities of French Indo-China and Siam and our normal and necessary imports of rice and rubber were thus hampered.

Now about the second point, assistance extended to the Chiang Kai-shek regime. The United States granted on November 20, 1940, an additional loan of \$50,000,000 to the Chungking Government, apparently in retaliation for the treaty between Japan and the Wang Ching-wei regime which was concluded the same day. Moreover, the United States authorities made it known that a further sum of \$50,000,000 was contemplated, to be offered for use in stabilizing Fapi, the Chinese currency. Following this step, the London government also made it known that a grant of £1,000,000 would be forthcoming. These are but a few of the examples, to say nothing of the continuous supply of materials to Chungking by the London government

As soon as the rainy season came to a close that year, Great Britain reopened the Burma Road to traffic and directly forwarded arms and munitions to the Chiang regime. In addition, the French Indo-China route was being utilized by the other nations as a line of supply to the Chungking government. In 1941 application of the Lend Lease Act was extended to China. We shall produce direct evidence of these facts.

Here we come to the third point - an iron ring of encirclement thrown around Japan by the several powers. In December 1940, the flower of the American Pacific Fleet was concentrated in the Hawaiian waters, constituting a demonstration against Japan. The British government on November 13 of the same year established at Singapore the headquarters of the Far Eastern Command, all of Malaya and Burma as well as Hongkong coming within its orbit. That government also began to undertake a formidable military expansion, a system of organizing British possessions in East Asia into a close unit with Australia and New Zealand. Conferences participated in by representatives of America, Great Britain, the Dutch East Indies and the Chiang Kai-shek regime took place in rapid succession during those days. A parley in Manila, held in April 1941 among the British Commander-in-Chief in the Far East, the United States High Commissioner in the Philippines, the United States Commander-in-Chief of the Asiatic Fleet and the Dutch Foreign Minister attracted our attention. Further, military councils were held between the delegates of Great Britain and Generalissimo Chiang Kai-Shek at Singapore about the middle of June. Particulars of these parleys will be disclosed by evidence.

Reacting to these numerous manifestations, the government of Japan hastened to take steps in order to avoid the imminent calamities. The Ambassador of Japan at Washington was requested since the spring of that year to do his best so that the deplorable tension might be ended and relations between America and Japan smoothed out. Parleys between the United States Chief Executive and the Japanese Ambassador, negotiations between the Secretary of

State and the Japanese Ambassador were incessantly held, these sessions reaching several score in number. The Tokyo government exerted every effort in order to effect a peaceful solution of all outstanding differences. The Japanese Premier offered to meet and negotiate directly with the Chief Executive of the United States somewhere in the midst of the Pacific in an attempt to settle the matter peacefully once and for all. Another envoy was dispatched to Washington to this end. A ministerial change en bloc was undertaken in the middle of July to carry through successfully the Japan-America negotiations, this being the last final step that an independent sovereign state could take for the purpose of diplomacy. However, all of these efforts were of no avail. On July 25, 1941, the government at Washington took steps to freeze all our assets within the United States. This resulted from a misconstruction of Japan's peaceful sending of troops to French Indo-China. Britain and Dutch East Indies also followed suit immediately, although at the time treaties of commerce and navigation were still in force between Japan and Great Britain and the Netherlands, so that the freezing of Japan's assets by Great Britain and the Netherlands was in violation of those treaties.

With your permission, let us again remind this Honorable Tribunal that Japan was quite unable to keep its population alive by the products raised within the Empire alone. Japan had to obtain necessary commodities by foreign trade. By the freezing of assets by the United States, Britain and the Dutch East Indies, more than half of Japan's foreign trade disappeared and the toil of eighty year's standing was wiped out. These were the results of the foregoing steps legally or illegally taken by America, Great Britain and the Netherlands. The inalienable right to live was deprived from the Japanese people. Just about that time, America at last put an embargo upon oil by the executive order issued on August 1st making good the veiled notification given to Ambassador Nomura on July 24th. Japan's navy was thus to lose mobility after her oil in stock was exhausted; solution of the China Incident was made prac-

45

State and the Japanese Ambassador were incessantly held, these sessions reaching several score in number. The Tokyo government exerted every effort in order to effect a peaceful solution of all outstanding differences. The Japanese Premier offered to meet and negotiate directly with the Chief Executive of the United States somewhere in the midst of the Pacific in an attempt to settle the matter peacefully once and for all. Another envoy was dispatched to Washington to this end. A ministerial change en bloc was undertaken in the middle of July to carry through successfully the Japan-America negotiations, this being the last final step that an independent sovereign state could take for the purpose of diplomacy. However, all of these efforts were of no avail. On July 25, 1941, the government at Washington took steps to freeze all our assets within the United States. This resulted from a misconstruction of Japan's peaceful sending of troops to French Indo-China. Britain and Dutch East Indies also followed suit immediately, although at the time treaties of commerce and navigation were still in force between Japan and Great Britain and the Netherlands, so that the freezing of Japan's assets by Great Britain and the Netherlands was in violation of those treaties.

With your permission, let us again remind this Honorable Tribunal that Japan was quite unable to keep its population alive by the products raised within the Empire alone. Japan had to obtain necessary commodities by foreign trade. By the freezing of assets by the United States, Britain and the Dutch East Indies, more than half of Japan's foreign trade disappeared and the toil of eighty year's standing was wiped out. These were the results of the foregoing steps legally or illegally taken by America, Great Britain and the Netherlands. The inalienable right to live was deprived from the Japanese people. Just about that time, America at last put an embargo upon oil by the executive order issued on August 1st making good the veiled notification given to Ambassador Nomura on July 24th. Japan's navy was thus to lose mobility after her oil in stock was exhausted; solution of the China Incident was made prac-

45

tically impossible; Japan's defense was emasculated. Hereupon the start question of self-defense presented itself before the whole nation as a cold and hard fact. This demanded immediate solution.

In short, fundamental factors justifying the exercise of the right of self-defense were entirely complete by that time. Notwithstanding, Japan did not exercise this right at that time. On the contrary, it was still willing to bear the unbearable, endeavoring to the utmost to eliminate somehow factors that might lead to casus belli. Its strenuous efforts to this end will be fully proved by evidence, at once strong and convincing.

Japan's will to peace, Japan's sincere efforts to attain peaceful settlement did not bear fruit. America's note on November 26, 1941, made it finally crystal clear that not one single factor contributing to a casus belli could be settled by pacific means. Thereupon, the Japanese government, after threshing out the opinion and observations of its various departments and after the utmost care and deliberation, was forced at last to resolve upon recourse to the right of self-defense. This was on December 1. However, even after the actual date on which the use of this right was decided upon, the war order issued contained an explicit proviso canceling all naval and military operations if a compromise should be effected between Japan and the United States. In that case, the combined fleet was to come back to home waters.

44. The prosecution is of the opinion that Japan was defective in communicating her intention to fight and that this must constitute a crime. The defense maintains the following facts. In the first place, due explanation will be developed concerning the time in which the Japanese note was handed to the United States together with particulars about this diplomatic procedure. On December 6, 1941, Washington time, the Japanese Foreign Ministry sent a dispatch to the Japanese Ambassador at Washington intimating that a note in English to be addressed to the State Department was ready.

Though the time in which the note in question was to be presented would be some time thereafter, they should be careful in the preparation of the document and be always in readiness to handle any matters in this connection, the dispatch instructed. All these telegrams were intercepted by the United States. Now that note comprised fourteen parts in all. Our Embassy at Washington was in receipt of thirteen parts on the evening of December 6. The United States intercepted that part of the dispatch by 9:30 PM, December 6, and the President gave them personal perusal. The last part was also intercepted on December 7. About the time when the said part was received, another dispatch arrived at the Embassy indicating the time at which the important note should be delivered; that time was one o'clock in the afternoon of the same day. Whereupon Ambassador Nomura hastened to make an engagement with the Secretary of State, Mr. Cordell Hull, to meet him at one o'clock PM. Had the note been delivered as was intended at one o'clock PM December 7, 1941, the delivery would have preceded the attack at Pearl Harbor, which took place at 25 minutes past 1:00 PM, Washington time. But the Embassy's deciphering and typing took so much time that, as the prosecution pointed out, Ambassador Nomura was unable to arrive at the State Department until 2:00 PM and handed the note at 2:20 PM. If the Ambassador could have delivered the note on his arrival at the State Department, the time of delivery would have been 35 minutes after the attack at Pearl Harbor, but as the Ambassador was kept waiting for 20 minutes, the delivery of the note was 55 minutes behind time.

As the Tokyo Government had sent the greater part of the dispatch the night before, and the remaining part was sent so as to be received early in the morning in order that the note should safely be delivered prior to 1:00 PM December 7th, that is, before the commencement of military operations, and if the routine business of the Embassy had gone smoothly, notification would have

been made as was anticipated, some time before the attack. But owing to circumstances beyond the control of Tokyo, the delivery of the note was delayed as above stated. These facts the defense will prove in due course.

45. Besides, we shall also try to prove the following fact with a view to providing this Honorable Tribunal with materials which we hope will be useful for its decision - whether the attack on Pearl Harbor was a surprise attack or not. The State Department authorities considered Japan's note to the United States dated November 20, 1941, as the last one and after November 26, the whole matter was thrown into the lap of the fighting services. On the morning of November 27, 1941, the highest official of the State Department stated that the matter of relations with Japan was in the hands of the Army and Navy. On the same day the Chief of Naval Operations and the Chief of Staff sent war warnings to the forces in Hawaii.

As previously stated, the American authorities deciphered the Japanese note, excepting the last part, by the evening of December 6 and this last part was deciphered December 7th early the morning, the President being in receipt of it at about 10 o'clock AM the same day.

The United States Departments of War and Navy were both in possession of intelligence suggesting that diplomatic rupture was at hand, and by conjecture that an imminent attack was to be anticipated. The Hawaiian Department was also in possession of an instruction that the policy to induce Japan to commit the first overt act should not be construed as restricting the Department to a course of action that might jeopardize its defense. Also it was directed to undertake reconnaissance prior to Japanese hostile action. No wonder that between 6:33 and 6:55 a.m. December 7 (Hawaiian time) the U.S. Navy shot and sank a Japanese midget submarine in the contiguous waters. We are adducing the above facts in order to show that the Pearl Harbor attack at 7:55 a.m. on December 7 (Hawaiian time) did not come as a surprise attack.

46. It is contended by the prosecution that the Japanese note in question does not amount to a declaration of war with the reasons assigned as stipulated in Article I of the Hague Convention III. In interpreting a document, circumstances giving rise to it must be weighed carefully to say nothing of its letter. Moreover, a document of this nature must always be studied as a whole, and not judged only by its wording and sentences. In the political atmosphere prevailing at that time, some of the responsible American authorities observed, as was stated before, that after November 26th matters were put into the hands of the fighting services. The Japanese note is a diplomatic document of considerable length consisting of not less than 2,400 words, which must be treated as a whole. We find in the Japanese note the following passages criticizing the American stand toward Japan and making it clear that there was no means left for Japan but to resort to arms. After confessing the difficulty the Japanese Government experienced in understanding the American attitude, the note observes: (I) "The peace of the world may be brought about only by discovering a mutually acceptable formula through recognition of the reality of the situation and mutual appreciation of one another's position. An attitude such as ignores realities and

imposes one's selfish views upon others will scarcely serve the purpose of facilitating the consummation of negotiations."

(II) "The American Government, obsessed with its own views and opinions, may be said to be scheming for the extension of the War."

(III) "Whereas the American Government, under the principles it rigidly upholds, objects to settling international issues through military pressure, it is exercising in conjunction with Great Britain and other nations pressure by economic powers. Recourse to such pressure as a means of dealing with international relations should be condemned as it is at times more inhuman than military pressure." (IV) All the items demanded of Japan by the American Government....ignore the actual conditions of China, and are calculated to destroy Japan's position as the stabilizing factor in East Asia. This demand of the American Government, falling as it does in line with its above mentioned refusal to cease from aiding the Chungking Regime, demonstrate clearly the intention of the American government to obstruct the restoration of normal relations between Japan and China and the return of peace to East Asia."

Briefly, the above parts of the note make plain the position of the Japanese Government, being deprived of the hope of further negotiation, was forced to have recourse to the last final step for the very sake of its self-defence. On the evening of December 6, 1941 even upon reading thirteen parts of the Japanese note the President said: "This means war."

At the end of the note it was pointed out that "the earnest hope of the Japanese Government to adjust Japanese-American relations and to preserve and promote the peace of the Pacific through cooperation with the American Government has finally been lost. The Japanese Government regrets to have to notify hereby the American Government that in view of the attitude of the American Government, it cannot but consider that it is impossible to reach an agreement through further negotiations". This was tantamount to severance of diplomatic relations and in the light of the tense

situation then existing in unmistakable notification of Japan's intention of commencing war.

47. Because of necessary limitations, only some of the most important issues have been touched upon in my present statement. There still remain numerous others but these have been deferred for treatment in the opening statements to be made later at the inception of several divisions of the defense case as I have previously outlined.

Mr. President and members of this Tribunal: I hereby beg your permission to express my sentiment of profound thanks for the generosity and patience with which you have given a fair hearing to the lengthy remarks I have made on behalf of the accused. We shall now go forward and present evidence of importance in great abundance. It is our firm belief that it will be worthy of your esteemed credence and consideration.

Truth we all here seek is not a matter of proving that one party is entirely right and the other absolutely wrong. Truth in the human sense often envelopes itself with human frailties, but we must plumb, even though painfully, but with impartiality, the deeper causes that prompt modern global wars. The way to peace must eradicate the vices underlying the present world. Whether the tragedy of modern wars might be due to racial prejudice or unequal distribution of natural resources or mere misunderstanding between governments or to the cupidity and covetousness of the favored or the less happy peoples, the cause must be ferreted out in the interests of humanity.

By finding the true and deeper cause or causes of this war and incidents during the period indicated by the prosecution, the guilt or innocence of the accused can be fairly determined, serving at the same time to guide the present and future generations in the direction and endeavor for a lasting world peace.